



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2004

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2004-3627

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200819.

The City of Lubbock (the "city") received a request for campaign finance reports filed by named individuals. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that certain home addresses within the submitted materials were redacted prior to the documents being submitted to us for review. A governmental body should not redact information from documents that it submits to this office when requesting a decision under chapter 552 of the Government Code, unless it has been expressly authorized in a previous determination to withhold such information from disclosure without requesting an attorney general decision. *See* Gov't Code § 552.301(a); *see also* Open Records Decision No. 673 (2001) (describing two types of previous determinations).

Under chapter 254 of the Election Code, every candidate for public office and officeholder must report (1) the full name and address of any person making contributions that, in the aggregate, exceed fifty dollars in value and (2) political expenditures that, in the aggregate, exceed fifty dollars. *See* Elec. Code §§ 254.001, 254.031; *see also id.* § 254.041 (criminal penalty for improper filing of report), § 254.042 (civil penalty for improper filing of report). Reports filed with the Texas Ethics Commission (the "commission") must be filed by

electronic transfer; reports filed with an authority other than the commission must be on a form prescribed by the commission. *Id.* § 254.036(a), (b). For candidates, each report must include (1) the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed, and (2) the campaign treasurer's name, residence or business street address, and telephone number. *Id.* § 254.061. For officeholders, each report must include the officeholder's full name and address and office held. *Id.* § 254.091(1). Generally, a report regarding a statewide office must be filed with the commission, a report regarding a county-level office must be filed with the county clerk, and a report regarding the office of a political subdivision other than a county must be filed with the clerk, secretary, or presiding officer of the governing body of the political subdivision. *Id.* § 254.066 (candidates must file report where campaign treasurer appointment must be filed), § 254.097 (officeholders must file report where campaign treasurer appointment must be filed); *see id.* § 252.005 (where campaign treasurer appointment must be filed). Section 1.012(c) of the Election Code provides that "[e]xcept as otherwise provided by this code or Chapter 552, Government Code, all election records are public information." Under section 1.012(d)(1), an election record is "anything distributed or received by government under this code." *But see* Open Records Decision No. 142 (1976) (under previous version of Election Code and Public Information Act, campaign contribution and expenditure reports were not excepted from disclosure). The submitted information consists of campaign contribution and expenditure reports filed with the city under sections 254.061 and 254.091; therefore, the reports are election records for purposes of section 1.012, and must be released unless an exception under chapter 552 applies.

The submitted information contains completed reports that are subject to 552.022 of the Government Code. *See* Gov't Code section 552.022(a)(1). Section 552.022(a)(1) states that a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You do not claim that section 552.108 excepts this information from public disclosure, but you do assert that the information is excepted under sections 552.101 and 552.117 of the Government Code. Sections 552.101 and 552.117 are considered confidentiality provisions for the purpose of section 552.022; therefore, we will consider whether these exceptions apply to the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by section 182.052 of the Utility Code. Section 182.052(a) provides as follows:

Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts billed to or collected from the individual for utility usage, if the customer

requests that the government-operated utility keep the information confidential.

Section 182.052, by its own terms, applies only to personal information in a customer's account record. The submitted information pertains to information in campaign finance reports, not utility customers' account records; therefore, none of the submitted information is confidential under section 182.052 for purposes of section 552.101.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, you may only withhold information under section 552.117 for those current or former officials or employees who timely elected to keep their personal information confidential; you may not withhold information under section 552.117 for any current or former official or employee who did not make a timely election to keep the information confidential.¹ All other information in the submitted materials must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

¹We note that a customer's written election to a government-operated utility to keep personal information confidential under section 182.052 of the Utilities Code is not an election to keep information confidential for purposes of section 552.117 of the Government Code.

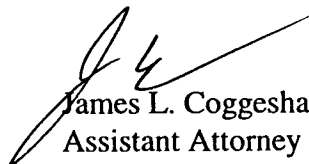
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/lmt

Ref: ID# 200819

Enc. Submitted documents

c: Mr. David Lanehart
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(w/o enclosures)